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硕 士 学 位 论 文

我国取保候审制度的完善
——对保释制度的借鉴

The improvement of our bail system
- Reference to the bail system

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摘 要

取保候审在我国刑事诉讼中是一种重要的强制措施，随着我国司法改革不断深入，审前羁押过度问题日渐显得突出，而取保候审作为一种非羁押性的强制措施，在实践中未能很好地发挥其应有的功能，该制度存在的问题备受关注。在目前我国取保候审的规定几乎成为一种虚设的尴尬局面下，我们应当对取保候审现状进行反思，取保候审制度的改革势在必行。

本文结合我国的实际，借鉴外国的保释制度，就应当如何完善取保候审制度进行探讨，主要从以下几个方面展开论述：

引言部分剖析了由于取保候审适用率低，导致我国司法实践中存在审前羁押率过高、司法成本不堪负荷的问题，提出为缓解羁押压力，节省司法资源，保障犯罪嫌疑人、被告人合法权益，应借鉴国外的保释制度，改革取保候审制度。

第一章概述了我国取保候审制度功能定位及立法现状。首先，分析取保候审制度具有权利保障、替代羁押、保障诉讼顺利进行等三种功能，讨论了取保候审在我国作为一种强制措施而非权利的定位，设立取保候审制度具有重大意义；其次，从适用条件、适用程序等方面来阐明我国取保候审制度的立法现状。

第二章探讨了保释制度与取保候审制度之间的差异。首先考察英、美、法、日等国保释制度的主要内容，阐述了保释制度的理论基础及诉讼价值；进而详细分析比较了保释制度与取保候审在立法理念、适用范围、适用程序、救济措施等方面的差异。

第三章深入剖析了我国取保候审制度存在的诸多问题。由于适用范围受到限制、标准不明确等原因造成了取保候审适用率低。在取保候审保证措施方面，存在保证方式单一、保证责任难以履行等问题。取保候审的期限不明，取保候审在各诉讼阶段之间的衔接缺乏合理操作规则，使得取保候审重复适用。因取保候审适用条件宽泛、决定行政化、监督制约机制不完善，致使其适用随意性大。同时，存在未建立有效的控制和配套措施等

执行不力问题。

第四章展望了完善取保候审制度的设想。借鉴保释制度，结合我国具体国情，提出改革取保候审的若干意见，具体方案包括明确取保候审的适用条件，增加保证方式，强化保证责任，规范期限，扩大“脱逃罪”适用主体，建立取保候审的司法审查程序和救济程序，完善配套措施。

关键词：取保候审；保释制度；制度改革；问题和建议

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Abstract

China bail in criminal proceedings is an important enforcement measures, along with the deepening of China's judicial reform, the problem of excessive pre-trial detention becomes increasingly prominent, and released on bail as a non-custodial coercive measures, in practice, failed to properly perform its proper function, the system problems of concern. At present, our bail requirements to become a dummy almost embarrassing situation, we should reflect on the status of bail, bail reform is imperative.

In this paper, China's reality, learn a foreign system of granting bail, the bail system should be to explore how to improve, mainly from the start on the following aspects:

Introduction As the bail application of some analysis of the low, resulting in China's judicial practice, there is high rate of pre-trial detention, the cost overburdened judicial problems, propose to ease the pressure on detention, save judicial resources, the protection of criminal suspects and defendants legal rights should learn from foreign bail system, reform the bail system.

The first chapter sets out the functional orientation of China's bail system and the legislative status quo. First, the analysis of the bail system with protection of the rights, alternative detention, guarantee the smooth progress of the proceedings, three functions, discussed in our country as a bail enforcement measures rather than the right position, the establishment of the bail system is of great significance; Secondly, from the applicable conditions, applicable procedures, to clarify the status of our legislative system of bail

Chapter II of the bail system and the differences between the bail system. First visit Britain, the United States, France, Japan and other countries the main content of the bail system, describes the theoretical basis of the bail system and the litigation value; then more detailed analysis of the bail system and released on bail in the legislative concept, scope, applicable procedures, remedies and

other differences.

Chapter III-depth analysis of our bail system has many problems. As the scope is limited, the standard does not explicitly apply to other causes of a low bail. Bail to ensure that measures, there is a single guaranteed way to ensure that responsibility is difficult to perform and so on. Unknown period of bail, bail each stage of the proceedings at the interface between the lack of reasonable operating rules make repeated bail application. Broad due to bail conditions for the application to determine administrative, supervision and control mechanisms are inadequate resulting in its application arbitrary. At the same time, there is not an effective control measures and supporting ineffective implementation issues.

Chapter Looking bail system to be perfect. Drawing on bail system, combined with China's specific conditions, the views put forward a number of bail reform, specific proposals include a clear application of bail conditions, increase security, strengthen the responsibility to ensure, compliance deadlines, and expand "the crime of escape" to escape the main application to be insured released on bail, the judicial review process to establish bail and relief programs, improve supporting measures.

Key words: bail, bail system, reform, issues and recommendations

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